

Message Text

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FM AMEMBASSY MADRID
TO SECSTATE WASHDC 2306

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FOR DOC/INVESTMENT POLICY DIVISION

E.O. 11652: N/A
TAGS: EINV, ECON, ELAB, ETRD, ST
SUBJECT: REQUEST FOR INFORMATION TO AID USG REVIEW OF
INTERNATIONAL INVESTMENT POLICY

REF: STATE 241996

1. THE GUIDING PRINCIPLE OF SPANISH INVESTMENT LEGISLATION UNTIL EARLY 1977 WAS TO GRANT FOREIGN INDIVIDUALS AND FIRMS COMPLETE FREEDOM TO SUBSCRIBE UP TO 50 OF THE CAPITAL OF ANY SPANISH COMPANY. FOR SUCH INVESTMENT APPROVAL IS ALMOST AUTOMATIC, THE ONLY REQUIREMENT BEING THAT AN INDUSTRIAL PERMIT BE OBTAINED AND THE INVESTMENT BE REGISTERED WITH THE FOREIGN INVESTMENT REGISTRY. SUCH REGISTRATION ENSURES RIGHTS TO SUBSEQUENT TRANSFER EARNINGS AND CAPITAL. FOREIGN PARTICIPATION OR HOLDINGS EXCEEDING 50 OF THE SPANISH COMPANY REQUIRED PRIOR R AUTHORIZATION FROM THE COUNCIL OF MINISTERS. PREFERENTIAL TREATMENT DESCRIBED IN PARAGRAPHS 4 TO 8 BELOW, PROVIDES INCENTIVES TO ADHERE TO THE RULES ON FOREIGN INVESTMENT.

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2. HOWEVER, ROYAL DECREE 3099 OF NOVEMBER 1976, WHICH WAS PROMULGATED IN JANUARY 1977, EASED THE REQUIREMENT FOR FOREIGN INVESTORS WISHING TO ACQUIRE MORE THAN 50 PARTICIPATION IN A SPANISH COMPANY, IF CERTAIN BALANCE OF PAYMENT AND EMPLOYMENT CONDITIONS ARE MET, BY MAKING APPROVAL AUTOMATIC IN THE ABSENCE OF AN OBJECTION BY THE GOVERNMENT WITHIN 90 DAYS. THIS APPLIES BOTH TO THE ESTABLISH-

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3. IN SUMMARY, THE REQUISITE CONDITIONS OF ROYAL DECREE 3099 ARE: (1) THAT THE INVESTMENT CONSIST OF FOREIGN CURRENCY OR CONVERTIBLE PESETAS, IMPORTED EQUIPMENT OR FOREIGN TECHNICAL ASSISTANCE, PATENTS OR LICENSES; (2) THAT THE INCREMENTAL INVESTMENT BE NOT LESS THAN 100 MILLION PESETAS (AT THE CURRENT EXCHANGE RATES ABOUT \$1.2 MILLION), OR THAT EXPORTS BE AT LEAST 50 OF PRODUCTION WITH A VALUE NOT LESS THAN 100 MILLION PESETAS (3) THAT THE SPANISH COMPANY MAKE NO PAYMENTS FOR THE TRANSFER OF TECHNOLOGY TO THE FOREIGN INVESTOR EXCEPT THOSE AGREED UPON FOR PREVIOUS SERVICES AND IN NO CASE CAN SUCH PAYMENTS BE STATED AS A CONSTANT PERCENTAGE, OR RELATED TO THE VOLUME OF BUSINESS ACTIVITY; (4) THE COMPANY MUST PROVIDE 100 NEW PERMANENT JOBS, AND (5) AFTER ONE YEAR ITS OPERATIONS MUST HAVE A POSITIVE ANNUAL BALANCE IN ITS FOREIGN EXCHANGE ACCOUNT OR, IF NOT, THE NEW OPERATION MUST PROVIDE AT LEAST 1000 NEW PERMANENT JOBS.

4. SINCE 1963, WHEN THE LAW OF "PREFERENTIAL INTEREST" WAS ESTABLISHED, DOMESTIC AND FOREIGN INVESTORS IN SPECIFIED INDUSTRIES HAVE BEEN OFFERED SPECIAL INCENTIVES FOR THEIR INVESTMENTS. IN THE SUMMER OF 1976, THE GOVERNMENT EXPANDED THE INCENTIVES AVAILABLE TO NEW INDUSTRIES AND NEW INVESTMENT, BOTH DOMESTIC AND FOREIGN. NEW TAX INCENTIVES WERE OFFERED TO COMPANIES WHICH LOCATED IN

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INDUSTRIAL OR AGRICULTURAL "PREFERENTIAL ZONES", WHERE THERE IS EXCESSIVE DEPENDENCE UPON AGRICULTURE OR RELATIVELY HIGH UNEMPLOYMENT. THE NEW LEGISLATION ALSO COVERED ACTIVITIES OR INDUSTRIES INVOLVING MINING, STEEL, FOOD PROCESSING, AGRICULTURE, SHIPBUILDING, AND FISHING.

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5. UNDER THE NEW DECREE-LAW A CREDIT OF 10 IS DEDUCTIBLE FROM THE PROFITS TAX ON THE INVESTMENT. THE INVESTMENT MUST HAVE BEEN ESTABLISHED ON A FIRM BASIS BEFORE MARCH 31, 1977 AND BE RECEIVED OR CONSTRUCTED BEFORE 1981. THE INCENTIVES INCLUDE ASSISTANCE IN PLANT LOCATION BY MEANS OF EXPROPRIATION OF LAND; REDUCTION OF UP TO 95 OF THE TRANSFER TAX AND OTHER TAXES RELATED TO SETTING UP OF BUSINESSES; FREEDOM OF DEPRECIATION DURING THE FIRST 5 YEARS, STARTING WITH THE FIRST YEAR OF OPERATION; PRIORITY IN OBTAINING OFFICIAL LOW-INTEREST CREDITS; AND SUBSIDIES TO BE DETERMINED ON A CASE-BY-CASE BASIS. EARLIER INCENTIVES, SUCH AS REDUCTION OF IMPORT DUTIES FOR PLANT EQUIPMENT NOT AVAILABLE IN SPAIN, ACCELERATED DEPRECIATION RATES, ETC. CONTINUE TO BE GRANTED.

6. SPANISH INVESTMENT AND INCENTIVES LAWS ARE EXPLAINED IN GREATER DETAIL IN OBR 76-49 OF DECEMBER 1976, AND MADRID A-08 OF JANUARY 31, 1977.

7. INCENTIVES FOR INVESTMENT. INCENTIVES ARE AVAILABLE IN POLICY AND IN PRACTICE TO DOMESTIC AND FOREIGN INVESTORS BUT ARE CONDITIONED BOTH BY INDUSTRY AND AREA. THE EASING OF THE REQUIREMENTS FOR GREATER THAN FIFTY PERCENT PARTICIPATION BY FOREIGNERS CAN, IN A SENSE, ALSO BE VIEWED AS AN INCENTIVE, CONDITIONED ON SIZE OF INVESTMENT, NUMBER OF NEW JOBS AND FAVORABLE FOREIGN EXCHANGE CONTRIBUTION. THE PRINCIPAL NATIONAL OBJECTIVES ARE

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PROMOTION OF EXPORTS, CREATION OF JOBS AND EXPANSION OF INDUSTRIAL BASE.

8. PERFORMANCE REQUIREMENTS ARE APPLIED TO BOTH DOMESTIC AND FOREIGN INVESTMENTS ON A CASE-BY-CASE BASIS AND COMprise A BROAD RANGE OF MEASURES INCLUDING QUANTITATIVE EMPLOYMENT QUOTAS, EXPORT AND IMPORT REQUIREMENTS, LOCAL CONTENT, CAPITAL FLOW AND ACCESS TO LOCAL CAPITAL MARKETS. THE IMPOSITION OF ANY OF THESE REQUIREMENTS IS GENERALLY OPEN TO NEGOTIATION, AND IT HAS BEEN DEMONSTRATED THAT THE GOS IS PREPARED TO RECOGNIZE AND ACCEPT THE REALITIES AND REQUIREMENTS OF PARTICULAR SITUATIONS.

9. LABOR AND EMPLOYMENT. FOREIGN INVESTORS ARE NOT EXEMPTED BY LAW FROM LABOR AND INDUSTRIAL RELATIONS REQUIREMENTS NOR, TO OUR KNOWLEDGE, HAS THIS BEEN DONE

ON AN AD HOC BASIS, ALTHOUGH THE ENFORCEMENT OF HEALTH AND SAFETY REGULATIONS, PARTICULARLY, HAS LEFT MUCH TO BE DESIRED. HOWEVER, THESE AND OTHER IMPORTANT AREAS SUCH AS CONDITIONS OF WORK ARE EXPECTED TO RECEIVE CONSIDERABLY MORE ATTENTION UNDER THE NEW DEMOCRATIC REGIME WHERE THE FREE TRADE UNIONS ARE IN THE PROCESS OF UNCLASSIFIED

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CONSOLIDATING THEIR POSITION. AT THE SAME TIME, THE GOS IS NOW TAKING COGNIZANCE OF THE BOTTOM-LINE COST AND RELATIVE COMPETITIVENESS OF SPANISH LABOR AND, FOR EXAMPLE, IS PUBLICALLY COMMITTED TO PROVIDING THE PRIVATE SECTOR SOME RELIEF FROM THE PRESENT SOCIAL SECURITY CONTRIBUTION BURDEN (WHICH WOULD BE TAKEN OVER BY GOVERNMENT).

FOREIGN INVESTORS HAVE NOT RECEIVED GOVERNMENT SUBSIDIES FOR WAGE PAYMENTS OR OTHER LABOR COMPENSATION. ON THE CONTRARY, FOREIGN (AND DOMESTIC) INVESTORS HAVE BEEN REQUIRED TO MEET BASIC STANDARDS. NEVERTHELESS, SOME OF THE REQUIREMENTS ARE CONSIDERED UNREALISTIC FOR LARGE ENTERPRISES, E.G. THE REQUIREMENT FOR ONE DOCTOR PER THOUSAND EMPLOYEES OVERSTATES THE NEED WHEN EMPLOYMENT EXCEEDS SEVEN OR EIGHT THOUSAND EMPLOYEES. HOWEVER, THIS IS BEGINNING TO BE RECOGNIZED BY THE GOS SO THAT

SPANISH LAW PLACES NO FORMAL QUALITATIVE OR QUANTITATIVE REQUIREMENT ON FOREIGN FIRMS WITH RESPECT TO THE THEIR STAFFING. HOWEVER, THE LABOR CODE (DECREE OF JULY 27, 1968) DOES REQUIRE THAT FOREIGN NATIONALS QUALIFY INDIVIDUALLY FOR LABOR PERMITS BEFORE BEING ALLOWED PERMISSION TO WORK IN SPAIN. LABOR PERMITS ARE GRANTED ON TWO CRITERIA (1) THAT THE FOREIGN APPLICANT BE QUALIFIED TECHNICALLY FOR THE POSITION IN QUESTION, AND (2) THAT THERE IS NOT A SURPLUS OF SPANISH WORKERS WITH EQUAL OR SUPERIOR QUALIFICATIONS IN THE POSITION TO BE FILLED.

A FOREIGN WORKER MUST RENEW HIS WORK PERMIT ANNUALLY, FOLLOWING THESE CRITERIA, FOR FIVE YEARS. THERE AFTER THE SPANISH GOVERNMENT CONSIDERS (PASSIVELY) THAT THE UNCLASSIFIED

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FOREIGN WORKER HAS UNIQUE QUALIFICATIONS FOR THE JOB HE OR SHE OCCUPIES.

10. COMMENT: THE BASIC FOREIGN INVESTMENT AND INCENTIVES LAWS, PASSED DURING THE FRANCO REGIME, ARE GENERALLY LIBERAL AND ARE NON-DISCRIMINATORY. SUBSEQUENTLY, BOTH LAWS WERE FURTHER LIBERALIZED BY THE CARE-TAKER GOVERNMENT. DEMOCRATIC ELECTIONS HAVE NOW BEEN HELD AND THE GOVERNMENT HAS BEEN SUCCESSFUL IN ACHIEVING AGREEMENT OF ALL OTHER MAJOR POLITICAL PARTIES TO AN ECONOMIC PROGRAM PREDICATED ON FREE MARKET FORCES, EMPHASIZING EXPORTS AND JOB CREATION, TO OVERCOME MAJOR CURRENT ACCOUNT DEFICIT, UNEMPLOYMENT AND INFLATION PROBLEMS. WHILE INVESTMENT AND INCENTIVE LAWS MAY NOT THEMSELVES BE FURTHER AMENDED IN THE NEAR TERM, IT IS REASONABLE TO EXPECT THAT THE GOS WILL CONTINUE ITS PRAGMATIC AND REASONABLE POSTURE IN NEGOTIATIONS CONCERNING THE CONDITIONS AND INCENTIVES FOR PRIVATE FOREIGN INVESTMENT. EATON

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